

WILMER CUTLER PICKERING  
HALE AND DORR<sup>LLP</sup>

October 15, 2004

**By Hand**

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, Massachusetts 02110

Mark C. Kalpin

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Re: D.T.E. 04-76 – Petition for Clarification as to the Extent of Applicability of Certain Provisions of M.G.L. c. 164 and 165

Dear Secretary Cottrell:

Enclosed for filing in the above-referenced matter is the Brief of Aquaria LLC in Support of Its Petition of Clarification.

Thank you for your attention to this matter.

Sincerely,



Mark C. Kalpin

Enclosure

cc: Caroline M. Bulger, Hearing Officer  
A. John Sullivan, Analyst, Rates and Revenue Division  
Service List  
dte.efiling@state.ma.us

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Aquaria LLC

Petition to the DTE for Clarification as to the  
Extent of Applicability of Certain  
Provisions of M.G.L. c. 164 and c. 165

October 15, 2004

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**D.T.E. 04-76**

**PETITION OF AQUARIA LLC  
IN SUPPORT OF ITS PETITION FOR CLARIFICATION**

Aquaria LLC d/b/a Aquaria Water LLC (“Aquaria”) has petitioned the Department of Telecommunications and Energy (the “Department”) for findings of fact and for a ruling of clarification of the extent of the applicability of certain provisions of M.G.L. Chapters 164 and 165. In its Petition and supplemental filings, Aquaria has made clear that it does not seek broad-scale waivers or exemptions from the requirements of Chapters 164 and 165, or from the Department’s regulations. Rather, Aquaria seeks confirmation from the Department – in any authorization issued to Aquaria under Chapter 165 – that either (a) the specific provision in question is not applicable to Aquaria, or (b) the provision in question grants the Department discretion in determining the method for compliance, and that the method proposed by Aquaria is acceptable to the Department.

Specifically, Aquaria seeks clarification from the Department that:

- (a) the provisions of Sections 4 through 33 of Chapter 164 are not applicable to Aquaria by virtue of the fact that Aquaria is a limited liability company, and not a corporation;
- (b) Aquaria, as long as it produces and sells water only in bulk (as opposed to selling water at retail) is the equivalent of a “wholesale generation company” under Chapter 164,

§ 1, and is thus exempt from the provisions of Sections 92 through 94, 96, 99, 101, 102A, 102B and 128 of Chapter 164, and the Department's related regulations, pursuant to M.G.L. c. 164, § 1A(e);

(c) although the provisions of Sections 80 through 84A appear to not apply to Aquaria, the alternate method proposed by Aquaria of satisfying any applicable requirements (*i.e.*, the maintenance and filing on an annual basis of detailed audited financial statements prepared in accordance with GAAP) is acceptable to the Department; and

(d) any lenders to the project will not, so long as the project continues to sell water only in bulk, face the prospect of becoming a regulated water company upon the exercise of standard mortgagee rights that are included in the terms of the loan documentation for the project.

## **I. Project Background**

### **A. Project Overview**

Aquaria is a joint venture between Bluestone Energy Services Inc., a local engineering firm and INIMA USA Corp. ("INIMA USA"), a subsidiary of INIMA, Servicios Europeos de Medio Ambiente, S.A. ("INIMA"). INIMA is an environmental engineering and construction company based in Madrid, Spain that has built more than 25 desalinization plants around the world, with a combined treatment capacity of 119 million gallons per day and providing drinking water to over 1.8 million people. INIMA USA is the managing member of Aquaria.

After extensive review by the Water Commission of the City of Brockton and based on extensive negotiations with the City and its outside counsel, INIMA and Bluestone have executed a water purchase agreement with the City (the "Water Purchase Agreement"). Pursuant

to that Agreement, Aquaria has been permitting a water treatment facility (the “Plant”) to be constructed on the Taunton River, 14 miles north of the river’s mouth, on a 20 acre site located in the Town of Dighton. Aquaria also proposes to construct the accessory pipes and mains (“Water Lines”) needed to develop the project and serve the City of Brockton and other cities and towns. (The Plant and the Water Lines are sometimes referred to as the “Water Treatment Facility”).

Aquaria intends to construct, finance, own and operate the Water Treatment Facility. The Plant will be sited on an industrial-zoned parcel within the Town of Dighton, and Aquaria will build the water lines from the site to certain cities and towns within the Commonwealth, including the City of Brockton. Initially, the Plant will be capable of producing up to 5,000,000 gallons of desalinated water per day, and the Water Lines will be capable of transporting up to 10,000,000 gallons per day. The Plant will be capable of expansion in the future to produce up to 10,000,000 gallons of desalinated water per day.

Aquaria intends to sell desalinated water manufactured at the Plant exclusively at wholesale to cities and towns under bulk contracts negotiated at arms length, without exercise of market power by Aquaria. Aquaria will make no sales of water at retail to end users (except to the extent that such municipalities choose to utilize a portion of such water for the needs of their own facilities and departments) (such exclusive wholesale sales and wholesale business, the “Wholesale Business Condition”).

Pursuant to the terms of the loan documents for the project, Aquaria is a single purpose entity and can construct only the Water Treatment Facility (and no other project) in the Commonwealth or elsewhere. Neither Aquaria nor any of its affiliates will have any exclusive franchise or service territory, nor will Aquaria’s Water Lines include distribution facilities that

will be used to directly sell to end users the water produced at the Plant.<sup>1</sup> All end users of water in the cities and towns will receive their water (and the water bills therefore) from such municipalities, and each city and town will establish the retail rates paid for water by such end users. The cities and towns that contract with Aquaria for the supply of water in bulk will have other sources of water in addition to the water purchased from Aquaria, so that Aquaria will not be the sole source of water for any city or town.

The permitting process for the Water Treatment facility is nearing completion. Aquaria has obtained approval from the Massachusetts Department of Environmental Protection (“DEP”) for Aquaria’s pilot plant in the Town of Dighton, which validates the technology that will be used in the Plant and demonstrates that it meets applicable regulatory requirements. Assuming that all required permits, authorizations, and approvals for the Project are timely received, Aquaria intends to commence construction of the Project in the Spring of 2005. Barring any unforeseen difficulties, construction should take approximately 2 years, and completion of construction is expected to occur in the Spring of 2007.

Aquaria has obtained a financing commitment from Banco Santander Central Hispano (“BSCH”) for the Water Treatment Facility, with a potential guarantee of BSCH’s financing by Ambac Assurance Corporation (“Ambac”). At the closing of the project finance loan with BSCH (the “Loan”), the Water Purchase Agreement will, pursuant to its terms, be assigned by INIMA and Bluestone to Aquaria, which will be substituted as the “Supplier” under that Agreement and pursuant to which Aquaria will, upon completion of the Plant and the Water Lines, commence the supply of water to the City of Brockton.

## **B. Need for Additional Supplies of Water in the City of Brockton**

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<sup>1</sup> In this regard, Aquaria would not engage in “distribution,” or be a “distribution company,” as those terms are defined in Section 1 of Chapter 164.

The City of Brockton currently obtains water from four sources: Silver Lake, Furnace Pond, Monponsett Pond, and Brockton Reservoir. In the 1980s, the City experienced a water supply crisis due to rapid population growth. As a result, the City currently operates under an Administrative Consent Order, or ACO, issued by the Massachusetts Department of Environmental Protection. The ACO authorizes Brockton to deliver up to 110 percent of the system safe yield – or 11.3 million gallons per day – on a 12-month rolling average. The ACO also requires the City to implement both short-and long-term measures to control its demand for water.

Brockton’s projected 2020 demand for water (including water for Hanson and Whitman) is 15.1 MGD. The City’s current sources can provide a safe yield of only 10.3 MGD. Therefore, the City needs to obtain an additional supply of up to 4.8 MGD.

The City has investigated potential sources of additional groundwater and/or surface water supplies located in the Taunton River basin for almost four decades. Sources of water that were investigated include Silver Lake, Jones River, Pine Brook, Indian Head River, the Pleasant Street Wellfield, the Hubbard Avenue Well, and the MWRA. All of these sources are unable to provide adequate supplies of additional water due to environmental and/or technical factors.

Brockton also evaluated obtaining additional supplies of water from the Aquaria desalinization project. After careful review, Brockton determined that the Project is the City’s most viable water source, and entered into the Water Purchase Agreement.

### **C. Overview of the Water Purchase Agreement**

The City negotiated the Agreement with Aquaria on a “sole source provider” basis under the provisions of General Law Chapter 30B, § 7. The City did so for the following reasons: (a) the City was facing future shortfalls in its projected water supply, and had determined that

Aquaria was the most viable source of additional supplies of water; and (b) the operations and services that Aquaria proposed to provide appeared to fall within the definition of a “water company” under Chapter 165, a designation which would make Aquaria a regulated industry company for the purposes of Chapter 30B, § 7 and Chapter 25, § 3.

In the event that Aquaria is determined not to be a regulated industry company by the Department, that failure would constitute an event of default under Section 15.1(m) of the Water Purchase Agreement, and the Agreement would terminate. If that were to occur, the City has stated that it is not confident that it will be able to timely negotiate a similar agreement for the supply of additional volumes of water within the necessary timeframe.

Numerous sections of the Water Purchase Agreement specify the volume of desalinated water that Aquaria is obligated to deliver to the City of Brockton from the Project, and the price that the City of Brockton is obligated to pay for that desalinated water, over the initial 20 year term of the Agreement. Under the Agreement, the rate that the City pays for water it receives is “fixed” – in that the price is not dependent on any of the factors that typically would be applicable to a company that is regulated on a cost of service basis – such as cost of service, original value amount and depreciation of physical plant, or operation and maintenance costs.

The City will purchase water from Aquaria on a wholesale basis. Aquaria will not engage in direct retail sales of water to any resident of Brockton (or any municipality). The City will receive water from Aquaria and “blend” that water – both in terms of volume and price – into water the City currently receives from its four other sources.

## **II. Analysis**

### **A. Aquaria is a “Water Company” under Chapter 165**

Section 1 of Chapter 165 defines a water “corporation” or “company” as “every person, partnership, association or corporation, other than a municipal corporation, and other than a landlord supplying his tenant, engaged in the distribution and sale of water in the commonwealth through its pipes or mains.”

Section 1 establishes a two-part test for being a “water company;” namely, (1) an entity must have one of the specified business forms, and (2) the entity must be engaged in the distribution and sale of water through pipes and mains in the Commonwealth. In this regard, it is important to note that the first part of this test – that the entity be a person, partnership, association or corporation – is different from the test established in Section 1 of Chapter 164 for establishing a “gas company” or an “electric company” (in that a gas company or electric company can only be a corporation). *See Dartmouth Power Associates Limited*, D.P.U. 90-142 (July 2, 1990). Aquaria believes that it is this difference that gives rise to the potential inapplicability of a number of the provisions of Chapter 164 in this matter.

Addressing the first prong of the two-part test established by Section 1 of Chapter 165, Aquaria is a limited liability company registered to conduct business in the Commonwealth in accordance with the provisions of M.G.L. c. 156C. As such, it is an “association” for the purpose of Section 1, and meets the first part of the standard.

In addition, Aquaria intends to design, permit, construct and operate a water treatment/desalinization plant in North Dighton, Massachusetts to withdraw and treat water from the Taunton River, and to then distribute and sell at wholesale<sup>2</sup> that water through pipes and

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<sup>2</sup> Chapter 165 does not define the term “distribution” in the context of a water company, nor does it specify whether the term “sale” includes wholesale sales, retail sales, or both.



mains to certain towns and cities within the Commonwealth, including the City of Brockton. Aquaria's proposed business activities clearly satisfy the second part of the standard set forth in Section 1.

When the City of Brockton negotiated the Water Purchase Agreement with Aquaria, the City declared Aquaria to be a "sole source" for the procurement of water pursuant to the provisions of M.G.L. c. 30B, § 7. By making this designation, the City was able to negotiate the Agreement in a manner and on a timetable that responded to the City's critical need for water. However, the City's designation was premised on the fact that Aquaria met the statutory definition of a water company, and accordingly would be so designated by the Department.

As such, it is critical that the Department confirm that Aquaria is a regulated water company under Chapter 165 so that Aquaria can meet a fundamental requirement that is a condition precedent under the Agreement. If Aquaria cannot meet that condition, the end result is that the Agreement will fail, and the City of Brockton will not be able to secure an additional supply of needed water on a timely basis. In addition, for the Project to be financed and constructed successfully, it is essential that the Department issue the clarifications that are requested by Aquaria in the Petition and Aquaria's supplemental filings.

**B. Because Aquaria is a limited liability company and not a corporation, the provisions of Sections 4 through 33 of Chapter are not applicable to Aquaria**

Section 2 of Chapter 165 provides that certain specified sections of Chapter 164 are applicable to corporations or companies that are regulated as a water company under Chapter 165. This broad reference to Chapter 164 provides the foundation for much of Aquaria's request in this matter, as the first part of the test established under Section 165 for a water company – that the entity be a person, partnership, association or corporation – is different from the test

established in Sections 1 and 2 of Chapter 164<sup>3</sup> for establishing a “gas company” or an “electric company” (in that a gas company or electric company can only be a corporation). *See Dartmouth Power Associates Limited*, D.P.U. 90-142 (July 2, 1990).

Sections 4 through 33 of Chapter 164 establish, either indirectly or by direct reference to the provisions of M.G.L. c. 156B (which govern the operation of corporations within the Commonwealth), certain requirements on the operations of corporations that are subject to the requirements of Chapter 164 (that is, electric companies and gas companies). Because Aquaria is a limited liability company, and not a corporation, the provisions of M.G.L. c. 156B do not apply to its operations.<sup>4</sup>

Thus, although Section 2 of Chapter 165 states that certain specified provisions of Chapter 164 are applicable to a water company, long-standing Department precedent confirms that the provisions of Sections 4 through 33 of Chapter 164 simply are not applicable to non-corporate entities such as Aquaria. As is discussed below, no rationale basis exists for the Department to require non-corporate entities to comply with those sections, as no method exists for a non-corporate entity to comply with them.

In *Dartmouth Power Associates*, the Department determined that because Dartmouth Power was not a corporation, it was not “an electric company under those sections of Chapter 164 not specified in Section 2 thereof....” *Id.* at 5. As a result, the Department ruled that Dartmouth Power was not subject to the provisions of Sections 3 through 33 of Chapter 164, which by their own terms apply only to corporations. *Id.* at 13. Instead, the Department

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<sup>3</sup> Specifically, Section 2 of Chapter 164 confirms that only certain specified sections of Chapter 164 are applicable to non-corporate entities.

<sup>4</sup> Instead, Aquaria is subject to the requirements of M.G.L. c. 156C, which govern the operation of limited liability companies within the Commonwealth. Aquaria fully intends to comply with those requirements, including the submission of all required documents and the payment of all required fees.

determined that Dartmouth Power was subject only to those provisions of Chapter 164 that are identified in Section 2 thereof.

The Department subsequently confirmed this conclusion in *MASSPOWER*, D.P.U. 92-152 (Feb. 9, 1993), where the Department stated that a “non-corporate entity such as MASSPOWER therefore does not constitute a gas company under G.L. c. 164, s.1”. The Department’s affirmation of its prior conclusion was not an anomaly.

As early as 1886, the Board of Gas Commissioners (the predecessor to the Department) observed that the language of Section 2 of Chapter 164 appeared to exempt unincorporated associations from regulation under Chapter 164. *See First Annual Report of the Board of Gas Commissioners to the Legislature, House No. 38, at p. 35 (Jan. 29, 1886).* In 1899, the Massachusetts Attorney General confirmed the Commissioners’ observation, and determined that the provisions of Chapter 164 relating to gas companies are applicable only to corporations, and not to other voluntary associations. *New England Gas and Coke Company*, \_\_ Op.Atty.Gen. p. 8-15 (1899).

As a result, Aquaria believes that, as a limited liability company, it is exempt from the provisions of Sections 4 through 33 of Chapter 164, and respectfully requests that the department confirm that exemption in any authorization granted to Aquaria under Chapter 165.<sup>5</sup>

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<sup>5</sup> Of interest, Section 2 of Chapter 164 also exempts from the application of Sections 3 to 33 and 93 of Chapter 164 those electric companies “which engage in generation and which are not part of a vertically integrated electric company or do not have a distribution affiliate in the commonwealth.” Aquaria, as long as it maintains the Wholesale Business Condition, will not be engaged in the “distribution” of water (as that term is defined in M.G.L. c. 164, § 1), and it does not and will not have a distribution affiliate in the Commonwealth. As such, this portion of Section 164 provides an independent basis for exempting Aquaria from the provisions of Sections 4 through 33 of Chapter 164.

**C. Aquaria, as long as it maintains the Wholesale Business Condition, is the equivalent of a “wholesale generation company under M.G.L. c. 164, § 1, and thus is exempt from the provisions of Sections 92 through 94, 96, 99, 101, 102A, 102B and 128 of Chapter 164, and the Department’s related regulations, pursuant to M.G.L. c. 164, § 1A(e).**

**1. Sections 92 through 94, 99, 101, 102A, 102B, and 128.**

Aquaria intends to produce and sell water only in bulk – that is, at wholesale – to municipalities within the Commonwealth. Aquaria believes that the circumstances presented in its Petition – that is, the extent to which a “wholesale” water company is regulated by the Department – is fully analogous the Department’s minimal regulation of a wholesale generation company under Chapter 164. In the context of wholesale generation companies, the Department has long determined that numerous provisions of Chapter 164 do not apply.

Beginning in *Dartmouth Power*, the Department concluded, in light of Dartmouth Power’s proposal to sell electricity exclusively at wholesale, that it was not necessary for the Department to regulate Dartmouth Power’s rates under Sections 92 through 94H of Chapter 164, and that the provisions of Sections 21, 96, and 97 of Chapter 164 would not apply to Dartmouth Power or its mortgagees. *Dartmouth Power*, at 7-8 and 13-14. Since the *Dartmouth Power* decision, the Commonwealth enacted the Electric Restructuring Act of 1997 (the “Act”). The Act, by amending Chapter 164 to establish a definition for the term “wholesale generation company” and exempt wholesale generation companies from the majority of the provisions of Chapter 164, confirmed the Department’s interpretation that wholesale generation companies should be subject only to minimal oversight and regulation by the Department. *See* M.G.L. c. 164, §§ 1 and 1A(e).

As a result of the passage of the Act, the Department has since expanded the conclusion reached in *Dartmouth Power* in more recent cases. For example, in *USGen New England*, D.P.U. 98-20 (April 8, 1998), the Department determined that only five sections of Chapter 164

– sections 1, 1A(e), 69R, 96 and 125A – are applicable to wholesale generation companies. That conclusion was confirmed by the Department in *Millennium Power Partners*, D.P.U. 98-19 (April 8, 1998). Based on this recent precedent, Aquaria respectfully requests that the Department determine that the provisions of Sections 92 through 94,<sup>6</sup> 99, 101, 102A, 102B, and 128 are not applicable to Aquaria so long as it maintains the Wholesale Business Condition.

## 2. Section 96.

Under the Act, Section 96 of Chapter 164 is made applicable to wholesale generation companies. However, by its own terms, not all of the requirements imposed by Section 96 are applicable to non-corporate entities such as Aquaria or to wholesale generation companies.

Section 96 of Chapter 164 authorizes a regulated gas or electric company to consolidate or merge with another such company, or to sell and convey its properties to another such company, or to purchase the properties of another such company, provided that the proposed purchase, sale, consolidation or merger, and the terms thereof, have been approved by a “vote of the holders of at least two thirds of each class of stock outstanding and entitled to vote on the question of each of the contracting companies.” Following such an affirmative vote, the company must obtain the approval of the Department. However, Department approval is not required for a proposed purchase or sale of properties by, or the consolidation or merger of, a wholesale generation company.

As an initial matter, the provisions of Section 2 of Chapter 164 confirm that Section 96 *is not applicable* to non-corporate entities such as Aquaria. *See Dartmouth Power*, p. 9. Aquaria will, of course, comply with all of the voting requirements for such a transaction that are set forth

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<sup>6</sup> Because Aquaria will not engage in the “distribution” of water, as that term is defined in M.G.L. c.164, §1, the provisions of Section 94 do not by their own terms apply to Aquaria.

in the Aquaria's operating agreement, as well as all applicable requirements for such a transaction that are imposed on limited liability companies by the provisions of M.G.L. c. 156C.

In addition, Section 96 specifically exempts "wholesale generation companies" from the requirement to obtain approval from the Department for certain purchases, sales, consolidations and mergers. *See USGen New England, Inc.*, D.T.E. 98-107 (1998), at pp. 8-9. Thus, as long as Aquaria maintains the Wholesale Business Condition, Aquaria would not be required (regardless of whether it is a limited liability company or a corporation) to obtain Department approval under Section 96.

As a result, Aquaria respectfully requests that the Department confirm that Section 96 of Chapter 164 is not applicable to Aquaria in their entirety.

**D. Aquaria, as long as it maintains the Wholesale Business Condition, should be authorized to utilize an alternative filing format for the purposes of complying with any applicable provisions of Sections 80 through 84A of Chapter 164**

Aquaria, as long as it maintains the Wholesale Business Condition, is the equivalent of a wholesale generation company. As such, Section 1A(e) of Chapter 164 makes clear that the provisions of Sections 80 through 84A of Chapter 164 would not apply to Aquaria.

In *Dartmouth Power*, the Department ruled – *prior to the passage of the Act* – that although the informational requirements of Sections 80 through 84A of Chapter 164 were (at that time) applicable to a wholesale generation company such as Dartmouth Power, "application to Dartmouth Power of the particular reporting provisions prescribed... for retail electric companies would serve no useful purpose in this instance." *Dartmouth Power*, at 11. As a result, the Department concluded that although Dartmouth Power would be required to file financial information with the Department, Dartmouth Power would not be subject to the strict

informational requirements applicable to franchised electric companies under Sections 80 through 83 of Chapter 164.

Notwithstanding the statutory exemption provided by M.G.L. c. 164, § 1A(e), Aquaria intends to prepare detailed financial information in accordance with generally accepted accounting principles (“GAAP”), and proposes to file its detailed audited financial statements with the Department for informational purposes on an annual basis. The audited financial statements that Aquaria will file with the Department will include detailed financial and operational information, including annual operation and maintenance cost information and capital cost information for the project. Aquaria respectfully submits that its proposal is fully consistent with the Department’s ruling in *Dartmouth Power*, and is preferable to the statutorily-provided alternative of complete exemption from all filing requirements established by Sections 80-84 of Chapter 164.

**E. The Project Lenders should not, as long as they maintain the Wholesale Business Condition, be subject to regulation as a water company under Chapter 165.**

In connection with the financing of the Project, the Project Lenders have requested that Aquaria obtain confirmation from the Department that the Project Lenders will not, so long as the Project continues to maintain the Wholesale Business Condition, face the prospect of becoming a regulated water company upon the exercise of standard mortgagee rights that are included in the terms of the loan documentation for the project, including, for example, the exercise by the project lenders of their rights under the mortgage to exercise typical mortgagees’ remedies, including taking possession of the project or selling the project at foreclosure sale.

Aquaria believes that the Project Lenders’ request is reasonable and should be granted, as it is consistent with prior Department precedent on this issue. For example, in *Dartmouth Power*, the Department concluded that it “would not foresee the need to regulate DPA’s lenders

solely because they exercise mortgagees' remedies with respect to the Facility, including foreclosure or the temporary ... taking of possession and operation of the facility pursuant to the [wholesale sales contract]." As a result, the Department ruled that "DPA's mortgaging of the Facility would not require further approval of the Department, and DPA's mortgagees, not otherwise electric companies, would either not become "electric companies" under Chapter 164, or would be subject to minimal supervision in the event they take possession under the mortgage." *Id.* at 13-14. In light of this precedent, Aquaria respectfully requests that the Department issue the requested clarification sought by Aquaria and the Project Lenders.

### **III. Conclusion**

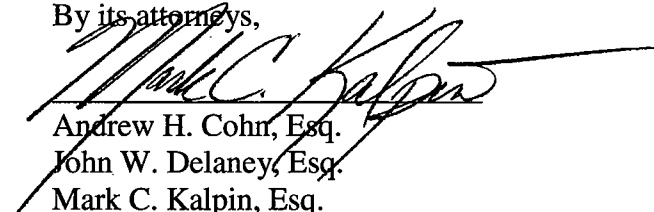
Despite engaging in activities that would define Aquaria as a water company, the nature of those activities -- the making of sales of water at wholesale and not at retail -- make the application of several sections of Chapter 164 inapplicable or inappropriate to Aquaria. The majority of the regulatory supervision to which an entity is subject under the included sections of Chapter 164 involves the oversight of rates charged by a monopolist supplier to end-use customers. Because Aquaria, pursuant to wholesale water contracts, will not be selling water at retail and will only be selling water to cities and towns which, in turn, will be establishing water



rates for their end user customers based on rates determined solely by such municipalities,  
Aquaria maintains that it is both reasonable and appropriate for the Department to grant  
Aquaria's request.

Respectfully submitted,  
AQUARIA LLC

By its attorneys,

A handwritten signature in black ink, appearing to read "Mark C. Kalpin", is written over a horizontal line. The signature is fluid and cursive.

Andrew H. Cohn, Esq.

John W. Delaney, Esq.

Mark C. Kalpin, Esq.

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, Massachusetts 02109

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DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Aquaria LLC

Petition to the DTE for Clarification as to the  
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**D.T.E. 04-76**

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this day caused the Brief of Aquaria LLC in Support of Its Petition for Clarification to be sent via first class mail to the service list in this matter in accordance with the requirements of 220 C.M.R. 1.05 of the Department's Rules of Practice and Procedure.

Dated at Boston on this 15<sup>th</sup> day of October 2004.

  
Mark C. Kalpin, Esq.

For: Aquaria LLC, Petitioner